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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,567	03/23/2004	Martin Levesque	36804-74889	2584
23643	7590	07/17/2006	EXAMINER	
BARNES & THORNBURG 11 SOUTH MERIDIAN INDIANAPOLIS, IN 46204			RACHUBA, MAURINA T	
			ART UNIT	PAPER NUMBER
			3723	

DATE MAILED: 07/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/806,567	<b>Applicant(s)</b> LEVESQUE, MARTIN	
	<b>Examiner</b> M Rachuba	<b>Art Unit</b> 3723	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 27 June 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 4 and 15-26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of species 1 in the reply filed on 27 June 2006, is acknowledged. The traversal is on the ground(s) that claims 13-17 also read on species 1, as set forth on page 13 of applicant's specification. This is not found completely persuasive. The examiner agrees to rejoin claims 13-14, but there is no evidence that the subject matter of claims 15-17 read on the elected species. There is no disclosure that species 1 includes an internal shaft, or protrusions on an internal shaft.

The requirement is still deemed proper and is therefore made FINAL.

2. This application contains claims 4 and 15-26 drawn to an invention nonelected with traverse in the response filed 09 January 2006. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

### ***Claim Rejections - 35 USC § 102***

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

4. Claims 1 and 3 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Fuller, 1,491,601, as set forth in the previous Office action.

### ***Claim Rejections - 35 USC § 103***

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuller, '601 in view of Garvey 3,148,485. '601 does not explicitly disclose the size of a first compartment being different from the size a second compartment. '601, page 2, lines 130 through page 3, lines 7, teaches that the proportions of the compartments are made in accordance with the sizes of the work parts to be tumbled. '485, in a similar device, column 3, lines 29-40, teaches that the compartments may be differently sized. It would have been obvious to one of ordinary skill in the art to have provided '601 with the differently sized compartments taught by '485, to allow different sized pads to be tumbled at the same time.

6. Claims 6-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuller '601 in view of Garvey '485 as applied to claim 2 above, and further in view of Miller et al, 3,498,089. '601 as modified by .485 discloses a door that pivots open and closed, but does not disclose an actuator coupled to the door or the actuator being a hydraulic cylinder. .089 teaches providing a tumbling device with a door actuated by a hydraulic cylinder. It would have been obvious to one of ordinary skill to have provided '601 as modified by '485 with a hydraulic cylinder to actuate the door as taught by '089, figure 6, allowing the container to be sealed during use, column 1, lines 37-48. .089 further teaches a sliding door, the door sliding up and away from the opening. It would have been obvious to one of ordinary skill to have provided '601 with a sliding door, as taught by '089, to allow the door to be completely moved from the opening of the container, inherently allowing easy access to the container. Further, '601 does not disclose that the drive motor operative to cause rotation of the container about the

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longitudinal axis is a hydraulic motor or an electric motor, but does disclose that there is a motor to drive the pulley and gear system to rotate the containers. The examiner takes Official notice that the use of hydraulic or electric motors to drive machine tools is old and well known, and that one of ordinary skill would have considered it obvious to have provided either type of old and well known motor to drive the container of '601.

7. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fuller '601 in view of Garvey '485 and Miller et al, '089 as applied to claims 2 and 5-8 above, and further in view of Pletscher, 3,948,003. '601 as modified by '485 and '089 does not disclose the container comprising an internal surface, the internal surface having protrusions projecting into each one of the plurality of compartments; or further comprising an internal member extending at least partially into at least one of the plurality of compartments. '003, in a tumbling apparatus, teaches the use of protrusions (internal members) on an internal surface of a tumbling compartment. It would have been obvious to one of ordinary skill in the art to have provided '601 as modified by '485 and '089 with the protrusions on the internal surface of the compartment, to further enhance the tumbling action of the workpiece, to enhance tumbling of the workpiece, see column 5, lines 63 through column 6, lines 40.

### ***Response to Arguments***

8. Applicant's arguments filed 27 June 2006 have been fully considered but they are not persuasive. Applicant argues that none of the applied prior art disclose or suggest the claimed intended use of the tumbler, that of artificially aging the appearance of surfaces, edges and corners of concrete blocks. A recitation of the intended use of the

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claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. Here, there is nothing in the disclosed prior art structures that would prevent using the structures to artificially aging the appearance of surfaces, edges and corners of concrete blocks. While Fuller does disclose a method polishing metal workpieces, by tumbling them with abrasive and liquid, there is nothing in the disclosure of the apparatus that would prevent the apparatus from tumbling concrete blocks. While the method may be different, and may provide different results, the apparatus is the same. The same holds true for the teachings of Garvey, Miller and newly applied Pletscher. See MPEP 2111.02.

9. This action is non-final to allow applicant fair opportunity to respond to the rejection of claims 13 and 14, rejoined in this action.

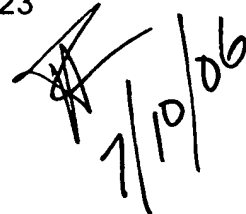
### ***Conclusion***

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M Rachuba whose telephone number is 571-272-4493. The examiner can normally be reached on Monday-Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Hail can be reached on 571-272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

M Rachuba  
Primary Examiner  
Art Unit 3723

Handwritten signature and date 7/10/06.